

CONTRACT #2
RFS # 327.12-023

**Department of Environment
and Conservation**

VENDOR:
**Megasys Hospitality
Systems, Inc.**

REQUEST: NON-COMPETITIVE CONTRACT

APPROVED

Commissioner of Finance & Administration

Date:

Each of the request items below indicates specific information that must be individually detailed or addressed as required. A REQUEST CAN NOT BE CONSIDERED IF INFORMATION PROVIDED IS INCOMPLETE, NON-RESPONSIVE, OR DOES NOT CLEARLY ADDRESS EACH OF THE REQUIREMENTS INDIVIDUALLY AS REQUIRED.

RFS #

327.12-023

STATE AGENCY NAME :

Department of Environment and Conservation

SERVICE CAPTION :

Hospitality Management System

PROPOSED CONTRACTOR :

Megasys Hospitality Systems, Inc.

CONTRACT START DATE :

(if date is < 60 days after F&A receipt, attach required explanation)

8/1/2005

LATEST POSSIBLE END DATE :

(including ALL options to extend)

7/31/2010

TOTAL MAXIMUM COST :

(including ALL options to extend)

\$2,500,000.00

APPROVAL CRITERIA :
(select one)



use of Non-Competitive Negotiation is in the best interest of the state



only one uniquely qualified service provider able to provide the service

ADDITIONAL REQUIRED REQUEST DETAILS BELOW (address each item immediately following the requirement text)

(1) description of service to be acquired :

The proposed contractor will operate the central reservation system. The proposed contractor will also provide software licensing, upgrades, maintenance, and support for the Tennessee State Parks hospitality management system at the facilities. In addition, the contractor will implement state-requested software modifications and enhancements.

Contingent upon favorable negotiations, the state may request that the contractor install and implement a complete and fully integrated golf course module that would allow us to book tee times, schedule tournaments, create and manage marketing promotions for frequent players, etc. A full marina module that would allow us to better manage the various boat slips and their ongoing rental and all the accounting that is associated with that operation would also be advantageous. (Currently, only merchandise sales and inventory modules are in use at golf courses and marinas.) Finally, implementation of the system at additional parks may be desirable.

(2) explanation of the need for or requirement placed on the procuring agency to acquire the service :

A performance audit issued by the Comptroller of the Treasury in August 1997 identified the need for a computerized system for managing reservations, charges, and related records, observing that a "manual system is time-consuming and more vulnerable to error than an automated system."

The Hospitality Management System is currently implemented at six state parks. The system is used at these 6 parks to manage operations for 6 inns and conference centers, 5 golf courses, 6 restaurants, 7 gift shops, 6 snack bars and 2 marinas. Also, it includes a Central Accounting Module that allows Fiscal Services to access consolidated financial information for all of these facilities in real time.

Operations for the last fiscal year alone included the processing of approximately 82,000 reservations for inn and cabin accommodations. These reservations are entered either by park staff, by the guest as an online reservation, or by Megasys Hospitality Systems staff at the Central Reservations service center that is provided as an additional service via the current contract. Also during the last fiscal year, over 530,000 point-of-sale transactions for the golf courses, gift shops, restaurants, snack bars, and marinas have been processed. In fact, over 144,000 credit card transactions, amounting to nearly \$10 million in credit card sales, were processed for the reservations and point of sale transactions at these 6 parks during the last fiscal year alone.

Tennessee is one of a few, if not the only, state that has such an integrated system in place, connecting multiple state parks and their various operations, in a standardized and fully integrated format that supports both the activities at the park level as well as the needs of central office staff. Based on the volume of transactions and the magnitude of dollars involved, this type of integrated system continues to be a necessity for the state park system.

(3) explanation of whether the service was ever bought by the procuring agency in the past, and if so, what method was used to acquire it :

The Department of Environment and Conservation issued RFP 327.12-002 during FY 2000 to procure the service and entered into a contract, effective August 1, 2000, for a five-year period that will end on July 31, 2005.

(4) name and address of the proposed contractor's principal owner(s) :
(not required if proposed contractor is a state education institution)

Patrick Curry
4770 S. Harvard
Suite 300
Tulsa, OK 74135

Ed Mascarin
4770 S. Harvard
Suite 300
Tulsa, OK 74135

(5) evidence that the proposed contractor has experience in providing the service and evidence of the length of time the contractor has provided service :

Megasys has satisfactorily met the state's contract requirements since August 2000 and has consistently demonstrated expertise in the development, implementation, and management of the hospitality management system. The department is extremely satisfied with the contractor's responsiveness and ability to interpret our business requirements. According to the company's website, the proposed contractor began providing hospitality management system services in December 1990.

(6) documentation of OIR endorsement of the Non-Competitive procurement request :
(required only if the subject service involves information technology)

select one:

☐

Documentation Not Applicable to this Request

☒

Documentation Attached to this Request

(7) documentation of Department of Personnel endorsement of the Non-Competitive procurement request :
(required only if the subject service involves training for state employees)

select one:

☒

Documentation Not Applicable to this Request

☐

Documentation Attached to this Request

(8) description of procuring agency efforts to identify reasonable, competitive, procurement alternatives rather than to use non-competitive negotiation :

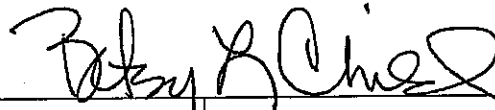
The system software and code are proprietary to the contractor and are not available from any other source. Consequently, the only alternative is the conversion to a new system, which would be cost prohibitive.

(9) justification of why the state should acquire the service through Non-Competitive Negotiation rather than through a competitive process :
(Being the "only known" or "best" service provider to perform the service as desired will not be deemed adequate justification.)

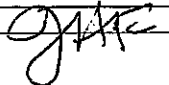
The state has made a significant investment in the existing system that would be lost by converting to a different system. Initial setup of the central reservation system and installation of the system in each of the resort parks was a substantial one-time cost (approximately \$1,000,000) in the original contract that would be incurred if a new system were developed, but not under the proposed contract. Approximately 350 state park and central office employees routinely use the system and would require training on any new system. State and contract personnel have expended considerable time and effort recording detailed information into the system about each park's facilities and amenities. This process and other customization would have to be converted, at substantial cost, in implementing a new system. Funds were previously appropriated for the implementation of the hospitality management system. It would not be the best use of state funds to unnecessarily incur the costs again at this time.

AGENCY HEAD REQUEST SIGNATURE:

(must be signed by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR — signature by an authorized signatory will be accepted only in documented exigent circumstances)



SIGNATURE DATE: 





STATE OF TENNESSEE

FAX TRANSMITTAL

TO:	Bill Ezell, Chief Executive Officer Office for Information Resources	FAX # 741-4589
FROM:	Ray Register, Director of Contract Administration	FAX # 532-0197
DATE:	December 9, 2004	
RFS#	327.12-023	
RE:	OIR Procurement Endorsement Documentation for — HOSPITALITY MANAGEMENT SYSTEM	

NUMBER OF FAX PAGES (INCLUDING COVER):

The proposed, service procurement documents referenced above are hereby forwarded to the Office for Information Resources (OIR) for review. The subject scope of services appears to include information systems services or information technology support activities.

This communication seeks to ensure that OIR is aware of the procurement and has an opportunity to review the matter to determine whether OIR is supportive. Please indicate OIR endorsement of the procurement described by signature below and return this communication at your earliest convenience (note the return FAX number above).

If you have any questions or concerns about this matter, please call Ray Register at 532-0216.

Thank you for your help.

Attachment

OIR ENDORSES THE SUBJECT PROCUREMENT REQUEST


Office for Information Resources


Date

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
AND
MEGASYS HOSPITALITY SYSTEMS, INC.**

This Contract, by and between the State of Tennessee, Department of Environment and Conservation, hereinafter referred to as the "State" and Megasys Hospitality Systems, Inc., hereinafter referred to as the "Contractor," is for the provision of central reservation and hospitality management system services, as further defined in the "SCOPE OF SERVICES."

The Contractor is. The Contractor's address is:

4770 South Harvard, Suite 300
Tulsa, OK 74135

The Contractor's place of incorporation or organization is Oklahoma.

A. SCOPE OF SERVICES:

- A.1. The Contractor shall provide the Central Reservation System service for Tennessee State Parks, including reservations made through the web-based Internet application, during the current hours of operation. The Contractor shall insure that State continues to have the ability to update the Central Reservation System from any of the parks. This includes any real time interface(s) needed to update each park Property Management System.
- A.2. The Contractor shall provide technical support and maintenance Help Desk services for the Tennessee State Parks hospitality management system 24 hours per day, 7 days per week.
- A.3. The Contractor shall notify State of all system upgrades and shall furnish State with all upgrades that become available. Upgrades shall be provided to the State free of charge. In the event of upgrades, Contractor shall provide support for the two (2) previous full major software releases.
- A.4. The Contractor shall provide any and all software licensing required to continue the hospitality management system and central reservation system functions.
- A.5. The Contractor shall implement software/system modifications requested by State. Where possible, modifications will be made at the Contractor's locations. Where necessary, modifications will be made by Contractor's personnel at state resort park locations.
- A.6. The Contractor warrants that it shall provide whatever modification and/or correction is required during the term of the contract to insure that the system remains integrated.
- A.7. Following each month of operation, the Contractor shall provide the State contact person with a printed report that displays the activities of the central reservation system.
- A.8. Contractor shall provide training and implementation services as required in order to successfully implement any or all of the system modules at additional state parks as selected and prioritized by the State. This includes modules originally implemented at the State resort parks as well as other modules that may be purchased by the State subsequent to those initial implementations.

B. CONTRACT TERM:

- B.1. Contract Term. This Contract shall be effective for the period commencing on August 1, 2005 and ending on July 31, 2010. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed [WRITTEN DOLLAR AMOUNT] (\$[NUMBER AMOUNT]). The Service Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Service Rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Service Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The Service Rates and the Maximum Liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

- C.3. Payment Methodology. The Contractor shall be compensated based on the Service Rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory completion of units of service or project milestones defined in Section A. The Contractor shall be compensated based upon the following Service Rates:

<u>SERVICE UNIT/MILESTONE</u>	<u>AMOUNT</u>
Software licensing, upgrades, maintenance and support (For 6 resort parks and central accounting server, already in production.)	\$??,???.00 per month[RC1]
Software licensing, upgrades, maintenance and support (For additional park implementations.)	\$???00 per month per park[RC2]
Central reservation system operation	\$????00 per month[RC3]
Successful implementation of State requested and approved software and system modifications	\$???00 per hour[RC4]
Successful implementation of State requested and approved software and system modifications performed by contractor personnel at state park sites	\$????00 per day[RC5]

On-site training	\$?????.00 per day per trainer
Installation and successful implementation of a fully integrated Golf module	\$?????.00 per park/ golf course
Installation and successful implementation of a fully integrated Marina Management module	\$?????.00 per park/ marina
Installation and successful implementation of any or all system modules at any other state parks, including all required third party software or licenses required (ex. ProvideX, PVRQ, etc.).[RC6]	\$?????.00 per park

The Contractor shall submit monthly invoices, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service or project milestones for the amount stipulated.

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.6. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.
- C.7. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.8. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.
- D. STANDARD TERMS AND CONDITIONS:
- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least ninety (90) days written notice before the effective termination date.

The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination" (sections D.6. and D.7.). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Records. The Contractor shall maintain documentation for all charges against the State under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.9. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.10. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.11. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.

- D.12. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.13. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.14. Force Majeure. The obligations of the parties to this contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.
- D.15. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.16. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under **Tennessee Code Annotated**, Sections 9-8-101 through 9-8-407.
- D.17. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.18. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.19. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:

Andy Lyon, Director of Hospitality
Tennessee State Parks
7th Floor, L&C Tower
401 Church Street
Nashville, Tennessee 37243
Telephone: 615-532-0001
Fax: 615-532-0732

The Contractor:
Bob Read
Megasys Hospitality Systems, Inc.
4770 South Harvard, Suite 300
Tulsa, OK 74135
Telephone: 918-743-0100
Fax: 918-743-9876

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. State Licensure of Software. As part of this Contract, the State receives licensed use of hospitality management software products developed by the Contractor, including central reservations software. These software products have previously been installed and are in use at Tennessee State Parks resort park operations, or at the Contractor's business location. The State receives a nonexclusive licensed use of the software products, modifications, upgrades, and associated documentation for the term of this Contract. In the event that it is determined that the Contractor's software will continue to be used by the State after the expiration date of this Contract, the parties shall enter into negotiations beginning six months prior to the Contract expiration date, with the objective of forming a new contract agreement. This provision shall in no way supersede any requirements of Tennessee law relating to state procurement and contracts.
- E.5. Partial Takeover. The State may, at its convenience and without cause, exercise a partial takeover of any service which the Contractor is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Contractor and a third party, although the Contractor is not in Breach (hereinafter referred to as "Partial Takeover"). Said Partial Takeover shall not be deemed a Breach of Contract by the State. Contractor shall be given at least 30 days prior written notice of said Partial Takeover with said notice to specify the area(s) of service the State will assume and the date of said assumption. Any Partial Takeover by the State shall not alter in any way Contractor's other obligations under this Contract. The State may withhold from amounts due the Contractor the amount the Contractor would have been paid to deliver the service as determined by the State. The amounts shall be withheld effective as of the date the State assumes the service. Upon Partial Takeover, the Contractor shall have no

right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- E.6. Confidentiality of Records. Strict standards of confidentiality of records shall be maintained in accordance with the law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of State law and ethical standards and shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with State law and ethical standards.

The Contractor will be deemed to have satisfied its obligations under this section by exercising the same level of care to preserve the confidentiality of the State's information as the Contractor exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of the first paragraph of this section.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.7. Copyrights and Patents. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State for infringement of any laws regarding patents or copyrights which may arise from the Contractor's performance of this Contract. In any such action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any final judgment for infringement. The Contractor further agrees it shall be liable for the reasonable fees of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State. The State shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof.
- E.8. Date/Time Hold Harmless. As required by **Tennessee Code Annotated**, Section 12-4-118, the contractor shall hold harmless and indemnify the State of Tennessee; its officers and employees; and any agency or political subdivision of the State for any breach of contract caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort or otherwise process dates or times.
- E.9. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and

obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by **Tennessee Code Annotated**, Section 8-6-106.

- E.10. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in **Tennessee Code Annotated**, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System, provides that if a retired member returns to State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to the Tennessee Consolidated Retirement System the amount of retirement benefits the Contractor received from the Retirement System during the period of this Contract.

IN WITNESS WHEREOF:

MEGASYS HOSPITALITY SYSTEMS, INC.:

Robert Read, President

Date

DEPARTMENT OF ENVIRONMENT AND CONSERVATION:

Betsy L. Child, Commissioner

Date

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. Goetz, Jr., Commissioner

Date

COMPTROLLER OF THE TREASURY:

John G. Morgan, Comptroller of the Treasury

Date